

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ZUMA PRESS, INC., ACTION SPORTS
PHOTOGRAPHY, INC., TIYU (BEIJING)
CULTURE MEDIA CO. LTD., MANNY
FLORES, ANDREW DIEB, CHRISTOPHER
SZAGOLA, LOUIS LOPEZ, CHARLES BAUS,
DUNCAN WILLIAMS, ROBERT BACKMAN,
JOHN MIDDLEBROOK, and ANTHONY
BARHAM,

Plaintiffs,

v.

GETTY IMAGES (US), INC.

Defendant.

Case No.: 1:16-cv-06110 (AKH)

**DECLARATION OF
JONATHAN BLOOM IN
SUPPORT OF GETTY IMAGES
(US), INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

I, Jonathan Bloom, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am counsel to Weil, Gotshal & Manges LLP and am duly admitted to practice in the State of New York. I represent defendant Getty Images (US), Inc. ("Getty Images") in this action.

2. I submit this declaration in support of Getty Images' Opposition to Plaintiffs' Motion for Partial Summary Judgment.

3. Annexed as **Exhibit A** is a true and accurate copy of excerpts of the transcript of the May 2, 2018 Deposition of Scott Mc Kiernan.¹

4. Annexed as **Exhibit B** are true and accurate copies of the following agreements between Action Sports Photography, Inc. ("Action Sports") and Stephen Arce: (1) an

¹ Pages 75 and 76 of the transcript of Mr. Mc Kiernan's deposition, included in Exhibit A, were cited in Getty Images' Memorandum of Law in Support of its Motion for Summary Judgment (*see* Dkt. 81 at 17) but inadvertently omitted from Dkt. 111-3 (Bloom Decl. Ex. C).

agreement titled “Guidelines for Company Credit / Debit Cards,” dated February 13, 2012, Bates-numbered ACT18950; (2) an agreement titled “Conflict of Interest Guidelines & Non Compete Disclosure,” dated February 13, 2012, Bates-numbered ACT18951-55; and (3) an agreement titled “Compensation,” effective January 1, 2012, Bates-numbered ACT18956-58.

5. Annexed as **Exhibit C** are true and accurate copies of the following agreements between Action Sports and Ashley Dickerson: (1) an agreement titled “Guidelines for Company Credit / Debit Cards,” dated February 29, 2011, Bates-numbered ACT18959; (2) an agreement titled “Compensation,” effective January 1, 2012, Bates-numbered ACT18960-62; and (3) an agreement titled “Conflict of Interest Guidelines & Non Compete Disclosure,” dated February 29, 2011, Bates-numbered ACT18963-67.

6. Annexed as **Exhibit D** are true and accurate copies of the following agreements between Action Sports and Michael Dinovo: (1) an agreement titled “Guidelines for Company Credit / Debit Cards,” dated February 16, 2012, Bates-numbered ACT18977; (2) an agreement titled “Compensation,” effective January 1, 2012, Bates-numbered ACT18978-80; and (3) an agreement titled “Conflict of Interest Guidelines & Non Compete Disclosure,” dated February 16, 2012, Bates-numbered ACT18981-85.

7. Annexed as **Exhibit E** are true and accurate copies of the following agreements between Action Sports and Crystal Alison Macleod: (1) an agreement titled “Guidelines for Company Credit / Debit Cards,” dated March 7, 2012, Bates-numbered ACT18968; (2) an agreement titled “Conflict of Interest Guidelines & Non Compete Disclosure,” dated February 15, 2012, Bates-numbered ACT18969-73; and (3) an agreement titled “Compensation,” effective January 1, 2012, Bates-numbered ACT18974-76.

8. Annexed as **Exhibit F** hereto is a true and accurate copy of Plaintiffs’

Responses and Objections to Getty Images' Second Set of Interrogatories, dated May 18, 2018.

9. To the best of my knowledge, Plaintiffs have not provided with their motion papers any indicia of ownership (whether through production of exclusive license agreements, copyright registration certificates, or otherwise) for photographs credited to the following photographers: KC Alfred, Jeff Aries, Armando Arorizo, Alan Ashley, Rex Atienza, Mark Avery, James Berglie, Anthony Bolante, Larry Clouse, Cecil Copeland, Daren Fentiman, Brian Freed, Stan Godlewski, Al Golub, John Green, Braden Gunem, Romeo Guzman, Burt Harris, Ben Hicks, George Holland, Mark Holtzman, Robert Hughes, Ben Johnson, Scott Kelby, Dinno Kovic, C.J. LaFrance, Mike McGinnis, Bill McGuire, Richey Miller, Lou Novick, Brandon Parry, Andrew Patron, Albert Pena, Jason Pohuski, John Pyle, Gray Quetti, JC Ridley, Javier Rojas, Ruby Rubinstein, Ariana Ruiz, Chad Ryan, Joe Scarnici, Kirstin Scholtz, Alan Schwartz, Kamal Sellehuddin, Yuli Seperi, Andrew Shurtleff, Jordan Stead, Servais, Damon Tarver, Scott Terna, and Josh Thompson.

10. By searching the credit attribution contained in both the Corbis caption data column and Getty Images' caption data column of Dkt. 111-31 (Bloom Decl. Ex. EEE),² counsel for Getty Images determined that 13,592 photographs are attributed to the photographers listed in paragraph 9 above. With respect to other photographers as to whose works Plaintiffs have failed to prove copyright ownership: 11 are attributed to Sergei Bachlakov; 3 are attributed to Brian Cahn; 2 are attributed to Mark Makela; 111 are attributed to Mark Sobhani; 879 are attributed to OSports or to CSPA; and 7,450 are attributed to Action Sports. In total, for the reasons described in Getty Images' Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment, Plaintiffs have failed to prove ownership of over 22,000 of the

² The same information can be found in Plaintiffs' altered version of Bloom Decl. Ex. EEE. *See* Dkt. 137-1-B.

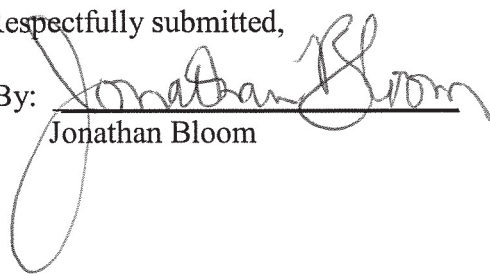
47,048 photographs at issue.

11. I hereby declare under the penalty of perjury that the foregoing statements made by me are true and accurate to the best of my knowledge, information, and belief.

Dated: New York, New York
July 20, 2018

Respectfully submitted,

By:


Jonathan Bloom